

UNITED STATES DEPARTMENT OF TRANSPORTATION
RECEIVED FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

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Served: May 5, 1992

FAA Order No. 92-31

ACC-10

In the Matter of:

CHARLES D. EADDY

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)
) Docket No. CP90AL0308
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ORDER

A hearing was scheduled to be held on this matter on October 28, 1991, before Administrative Law Judge Burton S. Kolko, in Juneau, Alaska. When Respondent Charles D. Eaddy did not appear at the hearing, the law judge dismissed the proceedings, holding that Respondent had withdrawn his request for a hearing by failing to appear. The law judge also ruled that the complaint^{1/} would become an Order Assessing Civil Penalty of \$2,000.^{2/} For the reasons set forth below, this case is remanded to the law judge for further proceedings.

On January 28, 1992, Respondent filed a "Motion for

^{1/} The complaint charged Respondent with attempting to enter a sterile area with a loaded pistol in his accessible luggage, prior to boarding an aircraft at Fairbanks International Airport, Fairbanks, Alaska. Respondent was charged with a violation of Section 107.21(a) of the Federal Aviation Regulations (FAR), 14 C.F.R. § 107.21.

^{2/} A copy of the law judge's oral initial decision is attached.

Rehearing" with the law judge. Complainant filed an Answer to Respondent's motion with the law judge on February 7, 1992. The law judge forwarded Respondent's motion and Complainant's response to the Appellate Docket Clerk.

The law judge was correct in not ruling on Respondent's motion because he had no jurisdiction to entertain a request for rehearing. See In the Matter of Degenhardt, FAA Order No. 90-20 (August 16, 1990); In the Matter of Cato, FAA Order No. 90-33 (October 11, 1990). The Rules of Practice, 14 C.F.R. § 13.201 et seq., do not provide for post-hearing motions, such as motions for rehearing.

Rather than simply dismiss the request for rehearing, Respondent's motion for rehearing shall be construed as an appeal to the Administrator from the law judge's oral initial decision.

Appeals to the Administrator must be filed within 10 days after entry of the oral initial decision,^{3/} and perfected by filing an appeal brief within 50 days after entry of the oral initial decision.^{4/} Respondent did not file his motion for

^{3/} 14 C.F.R. § 13.233(a) provides in pertinent part: " A party may appeal the initial decision ... by filing a notice of appeal with the FAA decisionmaker... not later than 10 days after entry of the oral initial decision on the record...."

^{4/} 14 C.F.R. § 13.233(c) provides in pertinent part: "Unless otherwise agreed by the parties, a party shall perfect an appeal, not later than 50 days after entry of the oral initial decision on the record ... by filing an appeal brief with the FAA decisionmaker."

rehearing until 92 days after the oral initial decision was rendered at the hearing.

The requirements that the notice of appeal and the appeal brief be filed in a timely manner shall be waived only for good cause. In the Matter of Metz, FAA Order No. 90-3 (January 29, 1990). Here, Respondent stated in his motion that he did not know that a hearing was held until the "local" FAA office received an "invoice" demanding payment of the civil penalty from him.^{5/} According to Respondent, he did not appear at the hearing because he was not informed of the exact date and location of the hearing. Respondent admitted having received a July 10, 1991, Order Scheduling Hearings from the law judge. The Order Scheduling Hearings notified the parties that a hearing would be held in this case on either October 28th or 29th in Juneau, Alaska. The Order Scheduling Hearings also provided that 30 days before the hearing the parties would receive a Notice of Hearing from the law judge advising them of the exact time and place of the hearing.

The law judge subsequently issued a Notice of Hearing stating that a hearing would be held in this case on October 28, 1991, at 9:00 A.M. at the U.S. District Court in Juneau, Alaska. Respondent denies having received the Notice

^{5/} Respondent's reference to an "invoice" is not explained in the record. He probably is referring to the Order Assessing Civil Penalty issued by Complainant memorializing the law judge's oral initial decision. The record does not contain a copy of that order. Respondent also does not provide the date on which he became aware of this "invoice".

of Hearing. The Notice of Hearing bears a stamp which states "SERVED August 28, 1991." Attached to the Notice of Hearing is a service list with Respondent's correct address, where Respondent received the earlier Order Scheduling Hearings. The law judge later explained in a "Notice to All Parties," that "[t]he case file in [his] office indicates that the Notice of Hearing was served upon the parties by first class mail on August 28, 1991." The law judge further explained that "there is no envelope in [his] file indicating a returned piece of mail by the Postal Service."

A rebuttable presumption arises that mail was received by the addressee when there is proof that it was properly addressed, stamped, and mailed. See Hagner v. U.S., 285 U.S. 427 (1932). Although the evidence in this case gives rise to the presumption that the Notice of Hearing was received by Respondent, his denial of receipt rebuts that presumption. See Rosenthal v. Walker, 111 U.S. 185 (1884); In Re Yoder, 758 F.2d 1114 (6th Cir. 1985); see also McCormick, LAW OF EVIDENCE § 344 (4th ed. 1987). Upon rebuttal of the presumption, the issue of receipt becomes one to be resolved by the trier of fact based upon all the evidence, including that evidence which gave rise to the presumption. Rosenthal, 111 U.S. at 192; McCormick, LAW OF EVIDENCE § 344 (4th ed. 1987).

The Order Scheduling Hearings notified Respondent that the hearing would be held in his case on October 28th or 29th in

Juneau, Alaska. As the dates drew near, a more diligent person would have inquired from Complainant or the law judge, the exact date and location of the hearing. However, under Section 13.221(a), 14 C.F.R. § 13.221(a),^{6/} Respondent was entitled to receive notice of the date, time, and location of the hearing. The Order Scheduling Hearings, which Respondent admitted having received, did not provide him with the exact date, location or time of the hearing. Consequently, the Order Scheduling Hearings, by itself, was insufficient notice of hearing under Section 13.221(a) of the Rules of Practice.

If Respondent did not receive the Notice of Hearing, as he claims, then he should be given the opportunity to present his case at a new hearing, and the matter of the timeliness of this appeal is moot.

If, on the other hand, Respondent did receive the Notice of Hearing, then he is not entitled to a new hearing. Also, if Respondent did receive the Notice of Hearing, good cause would not exist for waiving the time requirements for filing this appeal with the Administrator.^{7/}

Therefore, this case is remanded to the law judge for a

^{6/} 14 C.F.R. § 13.221(a) provides in pertinent part: "The administrative law judge shall give each party at least 60 days notice of the date, time, and location of the hearing."

^{7/} Persons notified of administrative hearings, who choose not to appear, bear the burden of informing themselves of what action was taken by the law judge in order to preserve the right to appeal. E.g., Brown v. NTSB and FAA, 795 F.2d 576 (6th Cir. 1986); Administrator v. Henthorn, NTSB Docket No. EA-3321 (May 31, 1991); Administrator v. Burr, NTSB Docket No. EA-2896 (February 20, 1989).

determination of whether or not Respondent received the August 28, 1991, Notice of Hearing. If the law judge finds, based on the totality of circumstances, that Respondent did receive the Notice of Hearing, he should issue a new initial decision that incorporates his decision of October 28, 1991. The Respondent could then appeal that decision to the Administrator if he so desires. If the law judge finds that Respondent did not receive the Notice of Hearing, then he shall schedule another hearing and proceed to decide the case on the evidence presented.^{8/}

Therefore, this matter is remanded to the law judge for further proceedings in accordance with this Order.



BARRY LAMBERT HARRIS
Acting Administrator
Federal Aviation Administration

Issued this 4th day of May, 1992.

^{8/} If the law judge decides to schedule a new hearing, Respondent is advised to respond in a timely manner to all orders of the law judge and to all requests of Complainant. The record of this case is replete with examples of Respondent's failure to defend his case. Respondent never filed an answer after the law judge dismissed his motion to dismiss the complaint. Respondent did not respond to Complainant's discovery requests or motions, or to the law judge's order compelling discovery.